

**EASEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 20____, by and between _____, ("Grantor"), having an address of _____, and, _____ ("Grantee"), having an address of _____.

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the county of Maricopa, State of Arizona, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Property is part of the Phoenix-Goodyear Airport Area Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983; and

WHEREAS, in a Record of Decision dated September 26, 1989 (the "ROD"), the EPA Region IX Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions: (a) extraction and treatment of contaminated groundwater using air strippers and carbon air emissions treatment, followed by aqueous phase carbon treatment of the groundwater prior to reinjection into the aquifer; and (b) soil vapor extraction followed by treatment or in the alternative, soils excavation; and

WHEREAS, implementation of the remedial action, including groundwater extraction and treatment and soil vapor extraction and treatment, and additional investigation continues at the Site; and

WHEREAS, the United States and Unidynamics/Phoenix, Inc. ("Unidynamics") and Crane Co. ("Crane") have entered into a Partial Consent Decree in Crane Co. et al. v. United States et al., CIV 03-2226-PHX-ROS, CIV 04-1400-PHX-ROS (Consolidated) (the "Consent Decree") with respect to the Site pursuant to which Unidynamics and Crane agree to perform

investigation and remedial action at the Site, and (a) to ensure a right of access over the Property to EPA for purposes of implementing, facilitating and monitoring the remedial action; and (b) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, the parties hereto have agreed, consistent with the Consent Decree, (a) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and (b) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of **[DEPENDS ON GRANTEE]**, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, (a) the perpetual right to enforce said use restrictions, and (b) an environmental protection easement of the nature and character, and for the purposes, hereinafter set forth with respect to the Property.

2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

3. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, are binding on the Grantor and all successive owners of any interest in the property and any other persons or entities entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property, and are for the benefit of EPA **[AND ADEQ]** as a third party beneficiary[ies]:

[IF FOR PARCELS B AND/OR C, INSERT RESTRICTIONS FROM CD]

4. Modification of restrictions: The above restrictions may be modified or rescinded, in whole or in part, only as allowed pursuant to the Consent Decree.

5. Easement: Grantor hereby grants to the Grantee a continuing right of access at all reasonable times to the Property and with consideration for minimizing disruption of ongoing activities being carried out on the Property, for purposes of:

- a) Monitoring response actions on the Site.

- b) Verifying any data or information submitted to the United States.
 - c) Conducting investigations relating to contamination at or near the Site.
 - d) Obtaining samples including, without limitation, obtaining samples of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples.
 - e) Assessing the need for, planning, or implementing additional response actions at or near the Site.
 - f) Implementing the response action in the ROD including amendments or modifications thereto.
 - g) Verifying that no action is being taken on the Property in violation of the terms of this instrument.
 - h) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.
7. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access, or EPA's authority to take response actions, under CERCLA, the National Contingency Plan, or other federal law.
8. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
9. Term of the Easement: This easement and the restrictive covenants herein granted shall remain in effect until rescinded, abandoned, or modified pursuant to Paragraph 30 of the Consent Decree.
10. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN EASEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS, DATED _____, 20____,
RECORDED IN THE PUBLIC LAND RECORDS ON
_____, 20____, IN BOOK _____, PAGE _____, IN**

**FAVOR OF, AND ENFORCEABLE BY, THE GRANTEE
AND FOR THE BENEFIT OF THE U.S. ENVIRONMENTAL
PROTECTION AGENCY [AND THE ARIZONA
DEPARTMENT OF ENVIRONMENTAL QUALITY].**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

12. Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action.

13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit B** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

15. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To EPA:

To Grantee:

To ADEQ:

16. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of Arizona and any applicable federal laws.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Third Party Beneficiary. EPA's [AND ADEQ'S] rights as third party beneficiary of this Covenant shall be construed pursuant to principles of contract law under the statutory and common law of the State of Arizona.

j) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

k) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 20__.

By: _____

Its: _____

STATE OF _____)

) ss

COUNTY OF _____)

On this __ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of _____

My Commission Expires: _____.

This easement is accepted this ____ day of _____, 20__.

the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

By: _____

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	list of permitted title encumbrances